

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE: ERIC VON DRAKE,
Petitioner.

) 3:08-MC-90-L
)

RECOMMENDATION

Pursuant to 28 U.S.C. § 636(b), the District Court referred Petitioner Eric Von Drake's Request for Hearing Regarding Petition to Perpetuate Testimony, filed June 9, 2008 to the United States Magistrate Judge for hearing, if necessary, and for determination. On June 9, 2008, Petitioner filed a Petition to Perpetuate Testimony pursuant to Fed. R. Civ. P. 27(a) in the United States District Court for the Eastern District of Texas (Marshall Division). The case was transferred to the Dallas Division and assigned the case number referenced above.

On August 15, 2008, Petitioner filed "Petitioner's Withdrawal of Requests to Take Depositions." This Court recommends that the District Court treat Petitioner's August 15, 2008 "withdrawal" as a Motion for Voluntary Dismissal pursuant to FED. R. CIV. PROC. 41(a). No defendant or respondent has entered an appearance and no cross-petitions have been filed. Petitioner should be allowed to voluntarily dismiss his petition and request for hearing, and the Clerk of Court should be directed to administratively close this case.

SO RECOMMENDED, September 12, 2008.


PAUL D. STICKNEY
UNITED STATES MAGISTRATE JUDGE

**INSTRUCTIONS FOR SERVICE AND
NOTICE OF RIGHT TO APPEAL/OBJECT**

The United States District Clerk shall serve a true copy of these findings, conclusions, and recommendation on the parties. Pursuant to Title 28, United States Code, Section 636(b)(1), any party who desires to object to these findings, conclusions, and recommendation must serve and file written objections within ten days after being served with a copy. A party filing objections must specifically identify those findings, conclusions, or recommendation to which objections are being made. The District Court need not consider frivolous, conclusory, or general objections. A party's failure to file such written objections to these proposed findings, conclusions, and recommendation shall bar that party from a *de novo* determination by the District Court. *See Thomas v. Arn*, 474 U.S. 140, 150 (1985). Additionally, any failure to file written objections to the proposed findings, conclusions, and recommendation within ten days after being served with a copy shall bar the aggrieved party from appealing the factual findings and legal conclusions of the Magistrate Judge that are accepted by the District Court, except upon grounds of plain error. *See Douglass v. United Services Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996) (en banc).